IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 20756 of 1994

And

WRIT PETITION NO : 24063 of 1996

W.P.No. 20756 of 1994

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Between:

Depot Manager, APSRTC Uppal Bus Depot
Hyderabad

..... PETITIONER

AND

1 Additional industrial Tribunal-cum-Additional Labour Court Rep.by its Presiding Officer
Hyderabad.
2 T.Muthu
C/o.A.K.Jayaprakash Rao Advocate
3-4-206/2,Lingampally Kachiguda,Hyderbad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari and to quash, the award dated 14-10-1993 passed in I.D.No.294/89 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court,Hyderbad, the 1st respondent herein, which was published in A.P.Gazette as G.O.Rt.No.947, dated 4-5-1994.

Counsel for the Petitioner: MRS.NANDA R. RAO

Counsel for the Respondent No.2: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: G.P. for Labour

W.P.No.24063 of 1996

Between:

T.Mathu S/o. K.Tyagarajan
R/o. H.No.16/3, Railway Quarters South Lallaguda, Secunderabad.

..... PETITIONER

AND

1 The Adiitional Industrial Tribunal -cum- Labour Court Rep by its Presiding Officer I Floor , Chandra Vihar Building M.J.Road , Hyderabad.
2 The Depot Manager
APSRTC, Uppal Depot RR.Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to May be pleased to call for the records from the 1st respondent and issue an appropriate order, direction or a writ, particularly one in the nature of writ of Certiorari, and quash the Award in I.D.No.294/1989 Dt: 14-10-1993 published on 13-5-1994, insofar as treating the past service only for the purpose of terminal benefits, as illegal, unjust , contrary to law and perverse and pass such other order or orders.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr. K. Harinath

The Court made the following :

:COMMON ORAL ORDER:

Both the writ petitions are interconnected and, therefore, heard together and disposed of by this common order.

W.P.No.20756 of 1994 is filed by the Management of the Andhra Pradesh State Road Transport Corporation (for short 'the APSRTC') and **W.P.No.24063 of 1996** is filed by the workman. Both the writ petitions assail the award of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (for short

'the Labour Court') dated 14-10-1993 in I.D.No. 294 of 1989. The parties shall be referred to as 'APSRTC' and 'workman'.

The workman joined the service of the APSRTC in 1973 as Driver in the ex-servicemen quota. He was promoted as Assistant Depot Clerk (ADC) in the year 1979. On 09-11-1984 while the workman was employed as ADC, a charge memo was issued setting out three articles of charge in respect of shortage of cash in an amount of Rs.10,338-10 Ps., a shortage that occurred on the intervening night of 8/9-11-1984. The charges, in brief, are (a) leaving the premises during duty hours in a staff bus leaving the cash in the open tray without informing anybody; (b) mis-appropriation of the bus earnings cash amounting to Rs.10,338-10 Ps., and (c) leaving cash in open tray and going out to attend the calls of nature when there was a lavatory attached to the cash room, thereby giving scope for the theft.

After a due process of inquiry, by the proceedings dated 27-05-1985, the punishment of removal from service was imposed on the workman. In the domestic inquiry, the workman was exonerated of charge No.1 and found guilty of charges No. 2 and 3. He preferred an appeal, which was dismissed on 01-101986. He preferred a revision therefrom, which was also rejected on 17-08-1989. Thereupon, the workman assailed the disciplinary proceedings and imposition of the penalty of removal from service by instituting I.D.No. 294 of 1989 under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act').

The Labour Court concluded that the domestic inquiry was valid. On merits, the Labour Court came to the conclusion that though, at the domestic inquiry, the workman was found guilty of charge Nos. 2 and 3 viz., misappropriation and negligence in leaving the cash in the open tray; the finding of guilt in respect of the charge of misappropriation was unsustainable, as neither the circumstances nor the evidence at the domestic inquiry supports the charge of misappropriation. The Labour Court, however, concurred with the departmental conclusion that the workman was guilty of negligence in the performance of his duties viz., in leaving the cash in the open tray and going out.

The facts apparent from the record of the disciplinary inquiry are that the workman was on duty during 10-00 A.M. to 6-00 P.M. on 08-11-1984. After his original spell of duty, he was, however, asked to continue beyond 6-00 P.M. and was, therefore, scheduled to perform the additional duty upto 2-00 A.M. on 09-11-1984. After completing his spell of duty, the workman's case was that he closed the cash box, locked the cash room at 3-55 P.M. (09-11-1984) and went to have a wash. He returned to the cash room at 4-25 A.M. and while counting the cash bundles, he noticed missing of the cash. He immediately informed his colleagues as well as others in the Depot. The workman also stated that he noticed the cash room window glass, supported by rods, removed and placed on table. On 09-11-1984 itself, he made good the amounts by depositing the cash after pledging the gold articles of his wife. As he found the missing of cash around 5-00 A.M., he lodged a formal report at 6-00 A.M., itself on 09-11-1984, including to the Sub-Inspector of Police, Musheerabad Police Station, Hyderabad, apart from one to the Depot Manager – Exs.M.1 and M.2 were marked in substantiation of the workman's claim of having lodged the reports, that he deposited the short fall amount on 09-11-1984 itself, which is an admitted fact and not in dispute. On the analysis of the evidence on record and the chronology of circumstances and events surrounding the missing of cash, the Labour Court came to the conclusion that there was no evidence what-so-ever that supports the charge of 'misappropriation'. The finding in the disciplinary inquiry as to the conclusion of the workman's guilt in respect of the charge of misappropriation was, therefore, reversed by the Labour Court in exercise of plentitude of its jurisdiction under Section 11-A of the Act. The reasons recorded by the Labour Court in coming to this conclusion are impeccable and warrant no interference.

In respect of charge of negligence in the performance of his duties, the Labour Court concurred with the findings of the disciplinary authority, as confirmed in the departmental appeal. In fact, the workman himself admitted to having left the cash in open tray and have gone out to answer calls of nature. For an officer, incharge of cash transactions, such conduct is demonstrably negligent and to a degree which constitutes 'misconduct'. The findings of the Labour Court concurring with the

conclusions of the departmental inquiry on the third charge framed against the workman viz., negligence in the performance of his duties, suffers from no error, either in the application of law, analysis of evidence or conclusions drawn from the evidence, warranting interference in a writ petition.

Coming to the operative portion of the award, the Labour Court records thus:

> *"In the circumstances, having found the punishment of removal from service as excessive and disproportionate, I direct the respondent to reinstate the petitioner into service with back-wages and continuity of service. His past service shall, however, be protected from the date of joining till the date of removal for terminal benefits only. He may be entrusted with any duty other than that of financial responsibility, but with protection of pay and service conditions of cadre of ADC."*

The substituted punishment imposed by the Labour Court, though within its jurisdiction under Section 11-A of the Act, is incomprehensible. Having correctly concluded that the punishment of removal from service of the workman is excessive and disproportionate to the only charge of negligence in the performance of duties, the Labour Court rightly directed reinstatement of the workman with backwages and continuity of service. However, it is recorded that the workman's past service be protected from the date of joining till the date of removal for terminal benefits only. If the workman were entitled to bakcwages and continuity of service, as per the earlier part of the award, the later part of the award conditioning the protection of service during the period of date of his removal to the date of his joining, pursuant to the award, only for the purpose of terminal benefits, would be incongruous with the earlier part of the award. If the earlier part of the award were to be considered as governing the grant of benefits to the workman, then the workman would suffer no punishment at all, despite having been found guilty of negligence in the performance of his duties as an ADC. The observation towards the end of the award that the workman be not trusted with any duty involving financial responsibility, cannot, however, be faulted.

It transpires that the workman has since the institution of this writ petition retired from service on superannuation with effect from 31-10-2000. On 24-11-1994 in

W.P.M.P.No.25692 of 1994 in W.P.No. 20756 of 1994 (the writ petition filed by the APSRTC against the award), this Court granted interim suspension of the operation of the award to the extent of paying of 50% of backwages as directed in the award. It is submitted by the learned counsel for the respective parties that in accordance with the interim orders of this court supra, 50% of the backwages have been paid to the workman and the balance 50% withheld by the APSRTC.

In the circumstances of this case and in the context of the incoherence in the phraseology of the operative portion of the award and the fact that the workman has been rightly found guilty of charge No.3 viz., negligence in the performance of his duties in leaving the cash in open tray and the further fact that the Labour Court has rightly concluded that the workman could not have been found guilty of charge of misappropriation on the basis of evidence at the domestic inquiry and considering the fact that the workman had retired from service on superannuation on 31-10-2000, this Court considers it appropriate to uphold the award of the Labour Court insofar as the conclusion as regards charge Nos. 2 and 3 against the workman are concerned. Insofar as the benefits consequent on the conclusions, it is appropriate to declare that the punishment of removal from service imposed on the workman is excessive and disproportionate and requires to be set aside. This conclusion of the Labour Court is confirmed. As a consequence, the petitioner shall also be entitled to continuity of service and all the benefits of such continuity including protection of seniority and all the rights to consideration for further promotion, if any, during the tenure of his normal service. 50% of the backwages have already been paid to the workman in the context of the conditional interim order granted by this court on 24-11-1994. Since the workman has been found guilty of the third charge, of negligence in the performance of duty and the negligence is not of a grave nature as to warrant imposition of any major penalty and has no operative penalty can be imposed on the workman, as he has already retired from service, the appropriate penalty that should be imposed on the workman is 25% cut in the backwages payable to the petitioner for the period of his removal from service consequent on the order of the disciplinary authority till the date of his reinstatement into service, which is stated to have been on 06-10-1994. The workman shall, therefore, be paid the balance of 25% of the backwages for the above period, since 50% of the backwages for the period is stated to have been already paid by the APSRTC. The award of the Labour Court

dated 14-10-1993 is modified as above and both the writ petitions are disposed of accordingly, without costs.

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GODA RAGHURAM, J

Dt. 05-08-2004

Pvks/DSR

To

1 The Presiding Officer, Additional Industrial Tribunal -cum- Labour Court
I Floor , Chandra Vihar Building M.J.Road , Hyderabad.
2 The Depot Manager
APSRTC, Uppal Depot RR.Dist.

3.2CCs to the Government Pleader for Labour, A.P. High Court Buildings, Hyderabad (OUT).

4.2CD copies